IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 7765 OF 2005.

Jayprakash Shankarrao Bodhankar. ...Applicant.
Versus.
Vijay Hareshwar Thakur and others. ... Respondents.

Shri K.K.Malpathak for the Applicant.

Mrs.M.M.Deshmukh, A.P.P. for the Respondent-State.

CORAM : ABHAY S.OKA, J.

DATED : 1st December, 2006.

P.C.:

1. Heard the learned Advocate appearing for the Applicant and the learned A.P.P. for the State.

2. The challenge in this Application under section 482 of the Code of Criminal Procedure, 1973 is to the order dated 19th October 2005 by which the Application for transfer of the Criminal Case made at the instance of the Applicant has been rejected.

3. The case of the Applicant is that he was posted as an Inspector of Police at Virar Police Station in the year 1992-93. Certain complaints were filed against the Applicant in the Court of the Judicial Magistrate First Class at Vasai. The Applicant was suspended. The Applicant filed Criminal Misc. Application No.883 of

1996 praying for transfer of two Criminal Cases against him from the Court at Vasai to a court at Thane. The transfer was sought on the ground that there was a danger to the life of the Applicant, if he attends the Court at Vasai. The said application was allowed by the learned Chief Judicial Magistrate, Thane by order dated 18th February 1997 by recording a finding that there was a substance in the apprehension expressed by the Applicant. In the year 1999, the Applicant made two applications being Criminal Miscellaneous Application Nos.150 of 1999 and No.151 of 1999 for transfer of two cases pending in the Court at Vasai to a court at Thane. The transfer was claimed on the basis of the same apprehension. Reliance was placed in the said applications on the order passed in Criminal Miscellaneous Application No.883 of 1996. By a common Judgment and order dated 19th October 2005, the learned Chief Judicial Magistrate, Thane allowed the Application No.151 of 1999 but rejected the Application No.150 of 1999. The challenge in this Application is to the order dated 19th October 2005 to the extent to which the Application No.150 of 1999 has been rejected.

4. I have heard the learned Advocate for the Applicant. On 06th December, 2005, a notice for final disposal of the Application was issued. The office notings show that the Respondents Nos.1 and 2 are served

with the notice and affidavit of service is also filed. The notice issued through Court is also served as per the office endorsement. None appears for the Respondents Nos.1 and 2.

5. A perusal of the impugned order shows that the learned Judge referred to earlier order passed in Criminal Miscellaneous Application No.883 of 1996 by which the Criminal Case No.473 of 1994 and 45 of 1995 were transferred from the Court at Vasai to a Court at Thane. The learned Judge observed that the Case No.299 of 1993 which is the subject matter of Criminal Miscellaneous Application No.151 of 1999 deserved to be transferred as it was required to be heard with the said Case No.45 of 1995. The reason given for rejecting Application No.150 of 1999 for transfer of Criminal Case No.437 of 1998 is that the Applicant did not produce any material in order to substantiate his claim that there is a danger to his life if he attends the case in the Court at Vasai. The learned Judge also referred to the prayer made in the alternative for grant of exemption.

6. It will be necessary to refer to the order passed in the earlier Miscellaneous Application No.883 of 1996 filed by the Applicant by which a prayer for transfer was allowed. In paragraph 3, the learned Chief Judicial Magistrate held thus:

> "Heard learned counsel for the applicant. Perused the copies of the prosecution against the applicant as well as the various papers in the form of the correspondence made by the applicant with police authority. **There is also one letter put on record by the applicant, which discloses that there is danger to the life of the applicant and it is informed by the applicant by this letter that somebody is engaged to finish the applicant. The correspondence put on record by the applicant reveals that he had repeatedly expressed apprehension to his life to the police authority**."(Emphasis supplied)

The apprehension expressed by the Applicant was the basis of the order of transfer passed in the earlier application No.883 of 1996. Based on the said order, the learned Chief Judicial Magistrate by the impugned order transferred one case pending in the Court at Vasai. In my view the learned Judge has taken a hypertechnical view of the matter. In view of the observations made while deciding the Application No.883 of 1996, the learned Judge ought to have allowed Criminal Misc. Application No.150 of 1996.

7. Hence the Application is disposed of by the following order:

i) Criminal Case No.437 of 1998 pending in the Court of the learned Judicial Magistrate First Class, Vasai is transferred to the Court of the Judicial Magistrate First Class, Ist Court at Thane.

ii) The Application is disposed of in the above terms.

iii) Writ be sent immediately.

Judge.